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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/466,155 06/06/95 BUHL

S 13898-0007-1

NAKARANI EXAMINER

D3M1/1010

TOWNSEND AND TOWNSEND KHOURIE AND CREW  
STEUART STREET TOWER  
ONE MARKET PLAZA  
SAN FRANCISCO CA 94105

ART UNIT	PAPER NUMBER
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1316

DATE MAILED: 10/10/96

Please find below and/or attached an Office communication concerning this application or proceeding.

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. <b>08/466,155</b>	Applicant(s) <b>Buhl et al</b>
	Examiner <b>D. S. Nakarani</b>	Group Art Unit <b>1316</b>



Responsive to communication(s) filed on Jul 25, 1996

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1-32 is/are pending in the application.

Of the above, claim(s) 1-28 is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 29-32 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 4

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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15.

Applicant's election with traverse of Group III, claims 29-31, (now claims 29-32) in Paper No. 7 is acknowledged. The traversal is on the ground that the amended claim 32 should be included in Group III and not in Group II because the amended claim 32 relates to the container of claim 29. These arguments are found persuasive and the Examiner includes claim 32 with the claims of Group III. Applicants have not traversed Groups I and II.

16.

Applicant's election of Group III, claims 29-32 in Paper No. 7 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (M.P.E.P. § 818.03(a)).

17.

Claims 1-28 are withdrawn from further consideration by the examiner, 37 C.F.R. § 1.142(b) as being drawn to a nonelected invention. Election was made without traverse in Paper No. 7.

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18.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

19.

Claims 29-32 are rejected under 35 U.S.C. § 103 as being unpatentable over Briggs et al (US Patent 3,932,943).

Briggs et al disclose a spherical highly porous, free-flowing particle having diameter of 0.84 mm in vial (small glass tube or container or bottle, which is also can be considered as cuvette) (see column 8, lines 11-20). Briggs et al fail to disclose spherical diameter larger than 0.84 mm. However,

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given the teaching of Briggs et al, a person of ordinary skill in the art to which this invention pertains would have found it obvious to package larger quantity of material or in a vial for given application. If one of ordinary skill in the art is desirous to make granules of larger diameter, would have found it obvious to make larger granules in absence of showing criticality of making larger granule size.

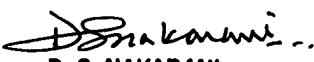
No claims are allowed.

20.

Receipt of Information Disclosure Statement filed October 5, 1995 is acknowledged. All US Patent references cited on PTOL 1449 have been made of record. References Romania 85,155 and <sup>A</sup> Discol, et al; Clin. Chem. (1983) 29:1609-1615 have not been made of record. If applicants are desirous to make these references of record, copies of these references with PTOL 1449 should be submitted to this office. These references are not in files of US Application Serial Nos. 08/134,574 and 07/747,179.

Any inquiry concerning this communication should be directed to D.S. Nakarani at telephone number (703) 308-2351.

D.S. Nakarani:jp  
October 09, 1996/October 02, 1996

  
D. S. NAKARANI  
PRIMARY EXAMINER  
GROUP 1300